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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 4th June 2009

No.4970—li/1(BH)-44/1995(Pt.)-LE—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th April 2009 in I.D. Case No.119 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the management of M/s IPISTEEL Ltd., Gundichapada, Dhenkanal and its workman Shri Hemanta Kumar Rath, At/Post Sadasivpur, District Dhenkanal was referred to for adjudication is hereby published as in the Schedule below:

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.119 OF 2008

Dated Bhubaneswar, the 16th April 2009

*Present :*

Shri P.C.Mishra, s.j.s. (Sr.Branch),  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of M/s IPISTEEL Ltd., Gundichapada, Dhenkanal. (And)	.. First Party — Management
Shri Hemanta Kumar Rath At/P.O. Sadasivpur, Dist. Dhenkanal.	.. Second Party —Workman

*Appearances :*

S.T.Ullaha, Authorised Representative.	.. For First Party —Management
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Shri Hemanta Kumar Rath,	.. Second Party —Workman himself
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## AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 175—li-1- BH-44/1995-LE., dated 3rd January 1996 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No.Li /21-32/2007/4138/ LE., dated 4th April 2008.

“Whether suspension of Shri Hemant Kumar Rath, Cashier by the Management of M/s IPISTEEL Ltd., Gundichapada, Dhenkanal with effect from the 3rd October 1992 and his subsequent dismissal from services with effect from the 10th February 1994 by the Management were legal and /or justified ? If not, what relief he is entitled to ? “

2. In this case, despite opportunities the workman did not file his claim statement but the management with a view to contest the case filed its written statement asserting therein that the workman was working as a Cashier in the factory and on 1st October 1992 Shri R.P.Singh submitted a report to the works Manager intimating that the workers of the 'A' shift did not do any work being instigated by the workman and others and basing on that report a charge sheet was issued to the workman on 5th October 1992 and he was put under suspension. It is stated that the communications sent to the workman having returned undelivered with the postal remarks "Refused", the same were handed over to him on 23rd April 1993 which he received. Stating details about the misconduct committed by the workman, it is averred in the written statement that the workman absented himself without handing over the key of the cash box and without handing over charge to his immediate superior Shri P.K.Samal for which the Accountant reported on 2nd February 1993 that an amount of Rs.54,524.68 was outstanding against the workman. It is said that basing on that report letters were sent to the workman on 5th February 1993 and 22nd February 1993, but when the workman did not respond to the aforesaid communications, the matter was informed to the O.I.C., Sadar P.S., Dhenkanal on 3rd March 1993 and simultaneously the workman was again asked to hand-over the charge vide letters dated the 22nd March 1993 and dated the 22nd March 1993. It is stated that in spite of receipt of letter dated the 22nd April 1993, the workman did not hand over the charge and instead wrote a letter on 26th April 1993 imposing unwarranted conditions of his own just to avoid the handing over the charge of cash and documents. It is stated that on 24th April 1993 the workman submitted his explanation to the charge and the same being found unsatisfactory, he was intimated about contemplation of a domestic enquiry into the misconduct. It is stated that subsequently after reconciliation of accounts, it was found that there was a cash shortage to the tune of Rs.3754.98 and accordingly a supplementary charge sheet was issued to the workman to which the workman submitted his explanation and as the same was found to be not satisfactory, he was intimated about conducting of a domestic enquiry into such supplementary charge and accordingly the Enquiry Officer held the enquiry in which the workman participated. It is stated that on completion of the enquiry, the Enquiry Officer submitted his report holding the workman guilty of the charges and upon perusing the same the disciplinary authority passed orders for his dismissal from service vide letter dated 10th February 1994. It is averred that the suspension of the workman and his subsequent dismissal from service being based on proved misconduct the same needs no interference and accordingly it has prayed to answer the reference in the negative as against the workman.

3. In his additional statement of claims/rejoinder the workman disputing the averments of the written statement filed by the management stated that initially he was appointed as an Accounts Assistant on 1st June 1989 and subsequently after being confirmed he was working as such till his dismissal. It is stated that the workman was functioning as the General Secretary of the IPISTEEL Employees Union and consequently he was declared as a 'Protected workman'. The workman asserted that during his incumbency on 21st August 1992 a demand for payment of bonus @ 20% was submitted to the management and for its non-acceptance by the management a conciliation was held which ended in failure and report to that effect was submitted by the D.L.O.-cum-Conciliation Officer on 1st October 1992 on which date the management declared lock-out of its factory at 2 P.M.

and removed all the employees who were on duty. It is stated that after the declaration of lock-out when the workman requested his immediate authority to take-over charge of the records of Accounts section and cash book nobody turned-up to take-charge from him. It is the specific stand of the workman that when the lock-out was lifted i.e., on 2nd February 1993 the workman reported to duty but he was not allowed to enter into the factory premises on the pretext that he was suspended from service and on his demand no such suspension order was handed over to him. It is stated that on 23rd April 1993 on the intervention of the D.L.O., Dhenkanal, the management served on him the letter of suspension, charge-sheet and other letters to which he submitted explanation on 24th April 1993 and a letter of request to the management on 27th April 1993 to take charge from him. It is stated that on 22nd May 1993 the workman was again communicated with a charge-sheet to which he replied on 31st May 1993. It is alleged that during enquiry although he participated in one occasion i.e. on 17th October 1993 but the subsequently dates of enquiry were not intimated to him and finally he was dismissed from services on 10th February 2007 on the basis of the report of the Enquiry Officer. Specifically he has stated that a copy of the enquiry report basing on which the punishment was imposed was not furnished to him. It is averred that he was not at all afforded with reasonable opportunities to demand himself in the enquiry nor he has any knowledge about the inventory and therefore, the shortage of cash amounting to Rs.3754.98 shown in the charge sheet is nothing but discloses the *mala fide* intention of the management to harass him. With the aforesaid averments, the workman has prayed for his reinstatement in service with full back wages.

4. On the basis of the averments of the parties, the following issues have been framed:-

#### ISSUES

- (i) Whether the suspension of Shri Hemant Kumar Rath, Cashier by the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal with effect from 3rd October 1992 and his subsequent dismissal from service with effect from 10th February 1994 by the management were legal and/or justified ?
- (ii) If not, what relief he is entitled to ?

5. To substantiate their respective stand, the management examined one witness on its behalf and brought on record documents which have been marked Exts. 1 to 21. The workman examined two witness including himself and got marked Exts. A to P.

6. It was contended by the management that since the dismissal of the workman was proceeded by a duly constituted domestic enquiry and basing on the conclusions arrived at in the said enquiry the punishment was imposed the same needs no interference. On the other hand, it was contended on behalf of the workman that there having a biased enquiry conducted into the misconducts alleged, the same is liable to be quashed and for non-supply of a copy of the enquiry report to him the punishment imposed be set aside. It was contended that had a copy of the enquiry report been supplied to the workman, he would have a chance to rebut the findings of the enquiry officer by placing material evidence before the disciplinary authority in support of his defence. On that count alone, it was urged, the action of the management is not sustainable.

7. In view of the rival contentions of the parties, it is first to be seen whether the enquiry against the workman was held in accordance with the principles of natural justice and whether on conclusion of such enquiry the workman was afforded sufficient opportunity to have his say on the report of the Enquiry Officer and as against the proposed punishment.

8. The management has examined M.W.No.1, Shri Binayananda Mohapatra to be its sole witness, who was appointed as the Enquiry Officer to conduct enquiry into the charges levelled against the workman. He in his evidence has deposed that on being appointed as Enquiry Officer he conducted the enquiry wherein the delinquent participated. He deposed that first of all the workman was made aware of the charges levelled against him and thereafter on the application of the workman the documents relied in the enquiry were supplied. He then recorded the statements

of the management's witnesses and that of the workman and on his denial to examine any more witness the evidence from the side of the workman was closed and alongwith the papers of the enquiry he submitted his report to the disciplinary authority. He proved the documents relating to his appointment as Enquiry Officer marked Exts.1 and 2 ; the charge-sheets dated the 5th October 1992 and dated the 22nd May 1993 and the replies to such charges , which have been marked as a part of Ext.5 series ; the statements of the witness recorded in the enquiry , Ext.4 series ; the day to day proceedings of the enquiry marked Ext.3 and his report Ext. 6. on a close scrutiny of the evidence of the Enquiry Officer together with the documentary evidence exhibited by him,it appears that the Enquiry Officer has afforded sufficient opportunity to the workman in his defence while conducting the enquiry and the workman in his defence while conducting the enquiry and the workman has also availed such opportunity and participated in the enquiry and the workman has also availed such opportunity and participated in the enquiry . There having no infirmity in the conduct of the enquiry ,the same in no way can be termed to be either unfair or improper . Hence the plea of the workman that he was not afforded with reasonable opportunity in the domestic enquiry besides being frivolous has no leg to stand . Accordingly, the enquiry conducted in the case is held to be fair and proper.

9. Now in view of the consistent case of the workman that he was not supplied with a copy of the enquiry report before infliction of the major penalty of dismissal on him, it is to be seen whether the disciplinary authority before taking any decision on the report of the Enquiry Officer had supplied a copy thereof to the workman so as to enable him to represent against the findings of the Enquiry Officer. In connection with the above, the Management has neither produced any oral nor documentary evidence which could show that opportunity with regard to represent against the report of the Enquiry Officer was ever afforded to the workman. The employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority being an integral part of the enquiry, non-supply of a copy of the enquiry report to the delinquent can be said to be a denial of reasonable opportunity to the employee to prove his innocence and thus the same is a breach of the principle of natural justice. In this connection, the decision reported in 2008(118) FLR 1112(State of Uttaranchal & Others Vrs.Kharak Singh) may be referred to, where in their lordships at Para.11 have held as follows:-

(i)      xx      xx      xx      xx

(ii)     xx      xx      xx      xx

(iii)    xx      xx      xx      xx

(iv)     On receipt of the enquiry report,before proceeding further, it is incumbent on the part of the disciplinary / punishing authority to supply a copy of the enquiry report and all connected materials relied on by the Enquiry Officer to enable him to offer his views, if any,

As stated above, the instant case the management has neither whispered a single word in its averment nor proved the fact of furnishing a copy of the enquiry report to the workman despite his consistent plea that he was not supplied with a copy of the enquiry report before infliction of punishment. Therefore, as held by the Hon'ble Apex Court in Kharak Singh 's case (*supra*), it is held that non-furnishing of a copy of the enquiry report is a denial of reasonable opportunity to the workman to prove his innocence and consequently is a breach of the principles of natural justice.

10. In the result, therefore, the action of the management is not sustainable and accordingly the same is held to be neither legal nor justified.

11. Now coming to the question of relief, in view of the conclusion arrived at in the foregoing paragraph, the workman is held entitled to reinstatement in service but without any back wages as there is nothing in the pleadings of the workman that during the period of his unemployment he was not gainfully employed elsewhere.

The reference is answered accordingly.

Dictated and corrected by me.

P.C.MISHRA  
Dt. 16-4-2009  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P.C.MISHRA  
Dt. 16-4-2009  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor

K. C. BASKE

Under-Secretary to Government